IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 161 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

JJJJ

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the revenue, the following two questions have been referred to this court under the provisions of sec. 256(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the capital gains earned by the assessee on the sale of shares was an accretion to the corpus of the trust fund and therefore not allocable as income amongst the beneficiaries?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that while computing the capital gains, depreciation in the value of shares of Sayaji Mills Ltd. of Rs. 108.75 per share should have been allowed and that the capital gains should be recomputed by the ITO on that basis?

2. We have heard learned advocate Shri Akil Qureshi appearing for the revenue. Though the respondent assessee has been served, nobody appears for the respondent.

3. So far the first question is concerned, it has been submitted by learned advocate Shri Qureshi that it has been now covered by the case of Kum. Pallavi S. Mayor v. CIT, Gujarat, 127 ITR 701. In case where an asset of a trust is sold and the trust is having income under the head 'capital gains', the question arises as to whether the said capital gains should be taxed in the hands of the trustees or the beneficiaries. In the case of Kum. Pallavi S. Mayor (supra) this court has decided that in such a case, the capital gains earned should be taxed in the hands of the trustee. The beneficiary cannot be taxed on the said capital gains because the capital gains arising out of sale of the capital asset would accrue to the trust and no beneficiary would get income therefrom. In the circumstances, following the said judgment, we answer the first question in favour of the assessee and against the revenue.

4. So far as question No. 2 is concerned, it has been decided by this court in case of Suhas Vadilal v. CIT in I.T.R. No. 420/83 on 21.9.1998 that, when as a result of sale of right shares issued by a company the assessee gets capital gains, he is also entitled to deduction of depreciation in the value of shares held by him. In the instant case, the assessee was holding shares of Sayaji Mills Ltd. which had issued right shares of Rajesh Textile mils Ltd. The assessee had sold shares of Rajesh Textile Mills Ltd. and had earned capital gains. In the process of issuance of right shares, the value of shares of Sayaji Mills Ltd. had been depreciated. On the principle laid down in the case of Miss Dhun Dadabhoy Kapadia v. CIT, Bomay, 63 ITR 651, the assessee is entitled to deduction from the capital gains an amount equal to the extent to which depreciation is suffered by the assessee in the value of the shares of Sayaji Mills Ltd.

5. Looking to the law laid down by this court and by the Hon'ble Supreme Court, we answer the second question in favour of the assessee and against the revenue.

Thus, both the questions are answered in favour of the assessee and against the revenue. The reference stands disposed of with no order as to costs.

(D.M. Dharmadhikari, C.J.)

(A.R. Dave, J.)

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